

Section 5.21-100 Variances

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5.21-105 Purpose

It is the intent of this Section that a Variance may be granted when the strict application of certain provisions of this Code create a unique circumstance, caused by unusual conditions related to a specific property, building or structure. An authorized Variance is not personal to the applicant, but runs with the land and/or use, as applicable. The granting of a Variance does not create a non-conforming use, lot/parcel.

5.21-110 Applicability

The Variance provisions of this Section apply to buildings, structures and lots/parcels. There may be provisions for Variances from other regulations specified elsewhere in this Code, including, but not limited to:

- A.** Floodplain Variances, which are processed using criteria specified in SDC 3.3-430.
- B.** Multiple Unit Housing Variances, which are processed using criteria specified in SDC 3.2-250.

5.21-115 Prohibited Variances

No Variance will be granted that:

- A.** Authorizes a use that is not permitted in the applicable land use district , overlay or Plan District;
- B.** Conflicts with adopted Fire and Life Safety Codes or Building Safety Codes; and/or
- C.** Varies from State or Federal mandated regulations, unless otherwise specified in this Code.

This version of the code is dated April 6, 2022 and reflects the Planning Commission recommendation with some additional edits. Changes recommended by the Planning Commission have been incorporated into this version. Additional edits made since the Planning Commission's recommendation are shown in track changes. Areas of the code that are highlighted in grey indicated sections that are clearly not applicable outside the city limits, inside the Urban Growth Boundary (UGB).

5.21-120	Review
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- A. A Minor Variance is reviewed under Type 2 procedure.
- B. A Major Variance is reviewed under Type 3 procedure.

5.21-125	Minor Variances—Criteria
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- A. Minor Variances are limited to certain specific numeric standards in this Code. The Director may adjust the following numeric standards by up to 30 percent as a Minor Variance:
 - 1. Building setbacks;
 - 2. Lot/parcel dimensions that do not reduce the required lot/parcel size below the minimum required in the applicable land use district;
 - 3. Building height;
 - 4. Lot/parcel coverage outside of the HD Overlay District as described in SDC 3.3-510; and
 - 5. Parking standards on certain infill lots/parcels.
- B. If the Minor Variance involves a setback, the plot plan shall be prepared by an Oregon registered surveyor.
- C. The Director may consider additional categories of Minor Variance, on a case by case basis, without the need for an Interpretation, as specified in SDC 5.11-100.
- D. The Director must approve the Minor Variance if the applicant demonstrates compliance with all of the applicable approval criteria:
 - 1. Locational or dimensional problems have been identified that can be resolved by a Minor Variance;
 - 2. The request is the minimum necessary to alleviate the identified dimensional or locational problem;
 - 3. Where applicable, the request shall result in the preservation of on-site trees 5-inch dba and above;
 - 4. The request shall not impede adequate emergency access to the site;

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5. The request shall not unreasonably adversely impact public or private easements; and
6. In addition to the applicable approval criteria specified in Subsections 1. through 5., above, the following approval criteria shall also apply to a request involving parking reductions on infill lots/parcels in the Commercial and Industrial Districts when there is a change of use, addition or expansion that requires Site Plan Review Modification. The Minor Variance for parking reductions shall not apply to MDS applications as specified in SDC 5.15-100:
 - a. The individual characteristics of the proposed use require more parking than is generally required for a use of this type,
 - b. The Minor Variance for a parking reduction shall run with the use or uses to which it pertains and not run with the land itself,
 - c. The need for additional parking cannot reasonably be met through provision of on-street parking or shared parking with adjacent or nearby uses because:
 - i. The owners of abutting properties cannot agree to execute a joint access/parking agreement, and/or
 - ii. The Public Works Director has determined the proposed shared parking area is a safety hazard because it is located too far from the proposed use,
 - d. The request shall not result in the parking or loading of vehicles on public streets in a manner that may interfere with the free flow of traffic on the streets,
 - e. The property otherwise complies with the provisions of this Code.

5.21-130 Major Variances—Criteria

Major Variances involve discretionary decision-making and apply to those Variances that are not Minor Variances as specified in SDC 5.21-125. The Approval Authority may approve or approve with conditions a Major Variance on finding that all of the following approval criteria are satisfied, otherwise the request will be denied:

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- A.** An unusual condition exists that is unique to: a lot/parcel, building or structure; lot/parcel size, shape or topography; the location or size of physical improvements; or other similar circumstances not anticipated by this Code but related to the property that would deprive the owner of rights commonly enjoyed by other property owners similarly situated in the same land use district;
- B.** The Variance shall not be inconsistent with the development standards of this Code or of any applicable Refinement Plan diagram, Plan District map, Conceptual Development Plan or other applicable plans or studies;
- C.** The Variance shall have no significant adverse affects on other properties in the same land use district and/or vicinity, or the request can be conditioned so that there are no significant adverse affects;
- D.** The unusual condition described in Subsection A. above shall not arise from a previous Code violation or rely only on loss of profit or financial need;
- E.** The Variance requested is the minimum necessary to alleviate the unusual condition.

5.21-135	Conditions
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The Approval Authority may attach conditions as may be reasonably necessary in order to allow the Minor or Major Variance to be granted.